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Attorneys for Proposed Intervenor-Defendant
Westlands Water District

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

HOOPA VALLEY TRIBE,

Plaintiff,

v.

UNITED STATES BUREAU OF
RECLAMATION; DAVID BERNHARDT, in
his official capacity as Secretary of the Interior;
BRENDA BURMAN, in her official capacity
as Commissioner of the United States Bureau
of Reclamation; ERNEST CONANT, in his
official capacity as U.S. Bureau of Reclamation
California-Great Basin Regional Director; and
UNITED STATES DEPARTMENT OF THE
INTERIOR,

Defendants.

Case No. 1:20-cv-01814-JLT-EPG

**DECLARATION OF CYNTHIA J.
LARSEN IN SUPPORT OF
WESTLANDS WATER DISTRICT'S
REPLY IN SUPPORT OF MOTION TO
INTERVENE AS DEFENDANT**

Hearing Date: December 23, 2022
Time: 9:00 a.m.
Courtroom: 4 – 7th Floor, Fresno
Judge: Hon. Jennifer L. Thurston

Trial Date: None
Action Filed: August 13, 2020

CASE NO. 1:20-CV-01814-JLT-EPG
DECL. OF C. LARSEN ISO
WESTLANDS WATER DISTRICT'S
REPLY ISO MOT. TO INTERVENE

DECLARATION OF CYNTHIA LARSEN IN SUPPORT OF WESTLANDS WATER DISTRICT'S REPLY IN SUPPORT OF MOTION TO INTERVENE

I, Cynthia J. Larsen, declare:

1. I am a partner with Orrick, Herrington & Sutcliffe, LLP ("Orrick"), attorneys for Westlands Water District ("Westlands") in the above-captioned case. I make this declaration in support of Westlands' Reply in support of Motion to Intervene. As counsel for Westlands, I am familiar with this case including the facts and the procedural history. I have personal knowledge of the facts in this declaration, and I could and would testify competently to them under oath if called as a witness.

2. Attached as **Exhibit 1** to this Declaration is a true and correct copy of the Superior Court of California for the County of Fresno's May 25, 2021 Validation Judgment validating Westlands Repayment Contract No. 14-06-200-7823J-LTR1-P.

3. Attached as **Exhibit 2** to this Declaration is a true and correct copy of Westlands' Repayment Contract No. 14-06-200-7823J-LTR1-P.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22th day of December 2022, at Sacramento, California.

By: //s// Cynthia J. Larsen
CYNTHIA J. LARSEN
Attorneys for Intervenor-Defendant
Westlands Water District

Exhibit 1

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FILED

MAY 25 2021

FRESNO COUNTY SUPERIOR COURT
By _____ DEPT. 403

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FRESNO COUNTY SUPERIOR COURT
By: I. Herrera, Deputy

Attorneys for Plaintiff
WESTLANDS WATER DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO, CENTRAL DIVISION

WESTLANDS WATER DISTRICT, a
California Water District,

Plaintiff,

v.

ALL PERSONS INTERESTED IN THE
CONTRACT BETWEEN THE UNITED
STATES AND WESTLANDS WATER
DISTRICT PROVIDING FOR PROJECT
WATER SERVICE FROM DELTA
DIVISION AND FACILITIES
REPAYMENT,

Defendants.

Case No. 20CECG03336

~~PROPOSED~~ 

VALIDATION JUDGMENT

Assigned for All Purposes to:
Hon. Kristi Culver Kapetan, Dept. 403

Date: March 4, 2021
Time: 3:30 p.m.
Dept: 403 - Kapetan

Action Filed: November 13, 2020
Trial: To Be Determined

1 This matter is before the Court on Plaintiff Westlands Water District's ("District") Complaint
2 for Validation Judgment seeking a validation judgment, pursuant to Code of Civil Procedure section
3 860, et seq., as to a contract between the United States and the District providing for Central Valley
4 Project ("CVP" or "Project") water service and facilities repayment. The specific contract is
5 identified as Contract No. 14-06-200-7823J-LTR1-P, and titled "Contract Between the United States
6 and Westlands Water District Providing for Project Water Service From Delta Division and
7 Facilities Repayment" ("Repayment Contract").

8 On September 15, 2020, the District's Board of Directors, by Resolution No. 124-20,
9 approved and authorized execution and delivery of the Repayment Contract in "substantially the
10 form presented to the Board," and on that basis, authorized the President of the District to execute
11 and deliver the Repayment Contract in substantially the form presented to the District's Board. The
12 parties subsequently fully executed the Repayment Contract as authorized by Resolution No. 124-
13 20.

14 The District filed this action on November 13, 2020, attaching Resolution No. 124-20 and
15 the fully executed Repayment Contract to its validation complaint.

16 The Court having reviewed the pleadings, the District's Application for Validation
17 Judgment, and the papers and pleadings on file in this action, and good cause appearing therefor,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

19 1. That this action is properly brought under Code of Civil Procedure section 860, et
20 seq., Water Code sections 35407, 35408, and 35855, and Government Code section 53510, et seq.,
21 to determine the validity of the proceedings leading to the approval and execution of the Repayment
22 Contract and related proceedings described in the complaint.

23 2. That the District is a California Water District duly organized and existing under and
24 by virtue of the California Water District Law (Part 1 of Division 13 of the California Water Code,
25 at Section 34000, et seq.) lying within Fresno County and Kings County, State of California, and is
26 a public agency of the State of California.

27 ///

28 ///

1 3. That the District completed publication of its Summons as directed in orders of this
2 Court, pursuant to Code of Civil Procedure section 861 and Government Code section 6063; and
3 that the time for answering the complaint specified in the Summons has since expired.

4 4. That (a) the District has, and at all times relevant has had, the authority to approve
5 and execute the Repayment Contract under California Water District Law, including Water Code
6 sections 35851 and 35875; (b) the proceedings related to the District's approval and execution of the
7 Repayment Contract were consistent with the District's statutory authority; and (c) the Repayment
8 Contract is in the foregoing specified respects valid under applicable California law and binding
9 upon the District.

10 5. That except as specified in paragraphs 1 to 4, inclusive, and notwithstanding any
11 contrary inference that might be drawn from the District's validation complaint or Resolution No.
12 124-20, this judgment is not intended to and does not adjudicate, inter alia:

13 (A) Whether the Repayment Contract complies with any federal laws or
14 regulations;

15 (B) Whether CVP operations to make water available to the District under the
16 Repayment Contract comply with applicable federal and state laws;

17 (C) Whether the District is entitled to delivery of any specific amount of CVP
18 water;

19 (D) Whether any specific quantity of water can be delivered to the District
20 without violating the rights of senior water rights holders, the public trust, or other requirements of
21 law;

22 (E) Whether the District, the Bureau of Reclamation, or both must take action to
23 address migration of selenium or other contaminants, if any, from the District, and provide a
24 permanent drainage solution under applicable requirements of law;

25 (F) Whether the District has a higher water rights priority than any other water
26 user, including but not limited to senior water rights claimants, those within the boundaries of Delta
27 agencies and counties, and those served by the Trinity River watershed;

28 ///

1 (G) Whether the Repayment Contract complies with the 1959 Delta Protection
2 Act (Water Code § 12200, et seq.);

3 (H) Whether the Repayment Contract complies with the 1992 Delta Protection
4 Act (Pub. Resources Code § 29700, et seq.);

5 (I) Whether the Repayment Contract complies with the 2009 Delta Reform Act
6 (Pub. Resources Code § 29700, et seq.; Water Code § 85000, et seq.);

7 (J) Whether the Repayment Contract complies with the Watershed Protection
8 Act (Water Code § 11460, et seq.);

9 (K) Whether the Repayment Contract complies with the Porter-Cologne Act
10 (Water Code § 13000, et seq.);

11 (L) Whether the Repayment Contract complies with the California Endangered
12 Species Act (Fish & G. Code § 2050, et seq.); and

13 (M) Whether water deliveries to the District violate prohibitions against
14 unreasonable uses, methods of uses, and methods of diversion of water in article X, section 2, of the
15 California Constitution.

16 6. That this judgment shall not make moot, supersede, or serve as a bar to any pending
17 or subsequent action against the Bureau of Reclamation by non-signatories to the Repayment
18 Contract.

19 7. That this judgment is not meant to serve as authority or precedent pertaining to any
20 contract or agreement other than the Repayment Contract.

21 8. That only as to the matters described in paragraphs 1 to 4, inclusive, pursuant to Code
22 of Civil Procedure section 870, this judgment is and shall be forever binding and conclusive as to
23 all matters herein adjudicated and as to all matters which could have been adjudicated herein against
24 the District and against all other parties to this action.

25 9. That only as to the matters described in paragraphs 1 to 4, inclusive, each and every
26 person is hereby permanently enjoined and restrained from instituting any action or proceeding
27 raising any issues as to the validity and binding nature of the Repayment Contract under the laws of

28 ///

1 the State of California as to which this judgment is binding and conclusive pursuant to Code of Civil
2 Procedure section 870.

3 10. That all parties shall bear their own attorneys' fees and costs.

4
5 DATED: 5/25/21

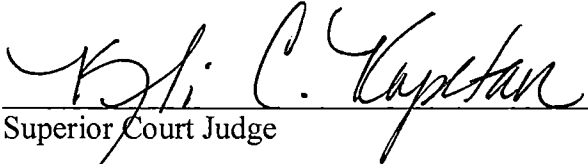
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8 Superior Court Judge
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Exhibit 2



United States Department of the Interior

BUREAU OF RECLAMATION
2800 Cottage Way
Sacramento, CA 95825-1898



IN REPLY REFER TO:

CGB-440
2.2.4.23

SEP 28 2020

Board of Directors
Westlands Water District
P.O. Box 6056
Fresno, CA 93703-6056

Subject: Water Infrastructure Improvements for the Nation Act Contract No. 14-06-200-7823J-LTR1-P Between the United States and the Westlands Water District Providing for Project Water Service – Central Valley Project, California

Dear Board of Directors:

Enclosed is an executed original of the subject contract for your records. The Bureau of Reclamation appreciates the effort expended by the Westlands Water District and its representatives relative to this contract.

The exhibit titled, "Repayment Obligation – Current Calculation Under the WIIN Act, Section 4011 (a) (2)", for the Contract Amendment will be finalized on the Effective Date of the Contract Amendment, in accordance with the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322).

If there are any questions, please contact Mr. Stanley Data, Repayment Specialist, at (916) 978-5246, or sdata@usbr.gov.

Sincerely,

Sheri A. Looper
Deputy Regional Resources Manager

Enclosure

Irrigation and M&I
Contract No.14-06-200-7823J-LTR1-P
(Oro Loma Partial Assignment)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

1 THIS CONTRACT, made this ____ day of _____, 20____, in
2 pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or
3 supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
6 October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992
7 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act
8 (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all
9 collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES
10 OF AMERICA, hereinafter referred to as the United States, represented by the officer executing
11 this Contract, hereinafter referred to as the Contracting Officer, and WESTLANDS WATER
12 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,
13 duly organized, existing, and acting pursuant to the laws thereof;

14 WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the California Central Valley Project (Project), for diversion, storage, carriage, distribution, and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation, and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4th] WHEREAS, the Oro Loma Water District (District) and the United States entered into Contract No. 14-06-200-7823, as amended, which established terms for the delivery to the District of Project Water from the Delta Division facilities from April 7, 1959 to February 28, 1995; and

[5th] WHEREAS, the United States and the District have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-7823-IR1 and subsequent Interim Renewal Contracts 14-06-200-7823-IR2 through 14-06-200-7823-IR8, which provided for water service to the District from March 1, 1995 through February 28, 2006; and

[6th] WHEREAS, the United States and the District entered into a long-term contract identified as Contract No. 14-06-200-7823-LTR1, hereinafter referred to as the Long-Term Contract, which provided for the continued water service to the District following expiration of Contract No. 14-06-200-7823-IR8; and

[7th] WHEREAS, the Contractor and the District executed an agreement on March 1, 2012, to provide for the partial assignment of 4,000 acre-feet of Project Water under the District's Long-Term Contract 14-06-200-7823-LTR1; and

[8th] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-7823J as amended, hereinafter referred to as the Existing Contract, which provided the Contractor Project Water from the Project facilities from March 1, 2012, through February 28, 2030, and which was in effect the date the WIIN Act was enacted; and

[9th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[10th] WHEREAS, Section 4011(a)(1) provides that "upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users' association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions."; and

[11th] WHEREAS, Section 4011(a)(1) further provides that "the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act

(53 Stat. 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

[12th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’ association [Contractor] and their landowners as provided under State law.”; and

[13th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

[14th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

[15th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

79 [16th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
80 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
81 reasonable and beneficial use and/or has demonstrated future demand for water use such that the
82 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
83 quantity of Project Water to be made available to it pursuant to this Contract; and

84 [17th] WHEREAS, water obtained from the Project has been relied upon by
85 urban and agricultural areas within California for more than 50 years, and is considered by the
86 Contractor as an essential portion of its water supply; and

87 [18th] WHEREAS, the economies of regions within the Project, including the
88 Contractor's, depend upon the continued availability of water, including water service from the
89 Project; and

90 [19th] WHEREAS, the Secretary intends through coordination, cooperation, and
91 partnerships to pursue measures to improve water supply, water quality, and reliability of the
92 Project for all Project purposes; and

93 [20th] WHEREAS, the mutual goals of the United States and the Contractor
94 include: to provide for reliable Project Water supplies; to control costs of those supplies; to
95 achieve repayment of the Project as required by law; to guard reasonably against Project Water
96 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
97 and to comply with all applicable environmental statutes, all consistent with the legal obligations
98 of the United States relative to the Project; and

99 [21st] WHEREAS, the parties intend by this Contract to maintain a cooperative
100 relationship in order to achieve their mutual goals; and

[22nd] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling, and conveyance of Project Water and non-Project water under this Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the beneficial use of water; and

[23rd] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[24th] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[25th] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal Reclamation law on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after the Effective Date or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) ("WIIN Act");

123 (b) "Calendar Year" shall mean the period January 1 through December 31,
124 both dates inclusive;

125 (c) "Charges" shall mean the payments required by Federal Reclamation law
126 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
127 annually by the Contracting Officer pursuant to this Contract;

128 (d) "Condition of Shortage" shall mean a condition respecting the Project
129 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
130 Contract Total;

131 (e) "Contracting Officer" shall mean the Secretary of the Interior's duly
132 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
133 or regulation;

134 (f) "Contract Total" shall mean the maximum amount of water to which the
135 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

136 (g) "Contractor's Service Area" shall mean the area to which the Contractor is
137 permitted to provide Project Water under this Contract as described in Exhibit "A" attached
138 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
139 without amendment of this Contract;

140 (h) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
141 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

142 (i) "Delta Division Facilities" shall mean those existing and future Project
143 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,
144 the C.W. "Bill" Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating

145 Plant, and the San Luis Reservoir, used to divert, store, and convey water to those Project
146 Contractors entitled to receive water conveyed through the Delta-Mendota Canal;

147 (j) "Eligible Lands" shall mean all lands to which Irrigation Water may be
148 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.
149 1263), as amended;

150 (k) "Excess Lands" shall mean all lands in excess of the limitations contained
151 in Section 204 of the Reclamation Reform Act of 1982, other than those lands exempt from
152 acreage limitation under Federal Reclamation law;

153 (l) "Existing Capital Obligation" shall mean the remaining amount of
154 construction costs or other capitalized costs allocable to the Contractor as described in Section
155 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
156 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
157 in the Final 2020 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The
158 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
159 Exhibit "C", which is incorporated herein by reference;

160 (m) "Full Cost Rate" shall mean an annual rate, as determined by the
161 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
162 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
163 deficits funded, less payments, over such periods as may be required under Federal Reclamation
164 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
165 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
166 date incurred in the case of costs arising subsequent to October 12 1982, and shall be calculated

in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982.

The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

(n) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

(o) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

(p) "Irrigation Water" shall mean the use of Project Water to irrigate lands primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto;

(q) "Landholder" shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(r) "Municipal and Industrial (M&I) Water" shall mean the use of Project Water for municipal, industrial, and miscellaneous other purposes not falling under the definition of "Irrigation Water" or within another category of water use under an applicable Federal authority;

(s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(t) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care, control, operation, repair, replacement (other than capital replacement), and maintenance of Project facilities;

(u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their) successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the Delta Division Facilities pursuant to written agreement(s) with the United States. When this

191 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota
192 Water Authority;

193 (v) "Project" shall mean the Central Valley Project owned by the United
194 States and managed by the Department of the Interior, Bureau of Reclamation;

195 (w) "Project Contractors" shall mean all parties who have contracts for water
196 service for Project Water from the Project with the United States pursuant to Federal
197 Reclamation law;

198 (x) "Project Water" shall mean all water that is developed, diverted, stored, or
199 delivered by the Secretary in accordance with the statutes authorizing the Project and in
200 accordance with the terms and conditions of water rights acquired pursuant to California law;

201 (y) "Rates" shall mean the payments determined annually by the Contracting
202 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
203 as described in subdivision (a) of Article 7 of this Contract;

204 (z) "Recent Historic Average" shall mean the most recent five- (5) year
205 average of the final forecast of Water Made Available to the Contractor pursuant to this Contract
206 or its preceding contract(s);

207 (aa) "Repayment Obligation" for Water Delivered as Irrigation Water shall
208 mean the Existing Capital Obligation discounted by $\frac{1}{2}$ of the Treasury rate, which shall be the
209 amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN
210 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the
211 United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

(bb) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(cc) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in Article 7 of this Contract and as provided for in Exhibit "B";

(dd) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(ee) "Water Made Available" shall mean the estimated amount of Project Water that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

(ff) "Water Scheduled" shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(gg) "Year" shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT – RIGHT TO USE OF WATER

2. (a) This Contract shall be effective October 1, 2020, hereinafter known as the "Effective Date", and shall continue so long as the Contractor pays applicable Rates and Charges

under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable Rates and Charges by the Contactor, unless the Contracting Officer has first provided at least sixty (60) calendar days written notice to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided, further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such non-compliance satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided, further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage

limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982, and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of this Contract shall no longer be applicable.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent allowed by law.

(d) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent allowed by law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 4,000 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the

CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of Contract No. 14-06-200-7823-LTR1, the Recent Historic Average Water Made Available to the District was 3,027 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

(1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a contractual agreement that the Contracting Officer shall make Project Water available at a point or points of delivery in or north of the Delta, at the request of the Contractor and upon completion of any required environmental documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on mutually agreeable terms. Such amendments to this Contract shall be limited solely to those changes made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water does not trigger this right of amendment.

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use

consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 45 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from

320 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
321 biological opinion or other environmental documentation referred to in this Article.

322 (f) Following the declaration of Water Made Available under Article 4 of this
323 Contract, the Contracting Officer will make a determination whether Project Water, or other
324 water available to the Project, can be made available to the Contractor in addition to the Contract
325 Total under this Article during the Year without adversely impacting other Project Contractors.
326 At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to
327 making such a determination. If the Contracting Officer determines that Project Water, or other
328 water available to the Project, can be made available to the Contractor, the Contracting Officer
329 will announce the availability of such water and shall so notify the Contractor as soon as
330 practical. The Contracting Officer will thereafter meet with the Contractor and other Project
331 Contractors capable of taking such water to determine the most equitable and efficient allocation
332 of such water. If the Contractor requests the delivery of any quantity of such water, the
333 Contracting Officer shall make such water available to the Contractor in accordance with
334 applicable statutes, regulations, guidelines, and policies. Subject to existing long-term
335 contractual commitments, water rights, and operational constraints, long-term Project
336 Contractors shall have a first right to acquire such water, including Project Water made available
337 pursuant to Section 215 of the Reclamation Reform Act of 1982.

338 (g) The Contractor may request permission to reschedule for use during the
339 subsequent Year some or all of the Water Made Available to the Contractor during the current
340 Year, referred to as "rescheduled water." The Contractor may request permission to use during
341 the current Year a quantity of Project Water which may be made available by the United States

to the Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (p) and (r) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration will be expressed in terms of Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on the then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the

initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) thereto satisfactory to the Contracting Officer, submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at a point or points on the Delta-Mendota Canal and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) The Contracting Officer, either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting Officer at the point or points of delivery established pursuant to subdivision (a) of

this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); or (iv)

a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used

to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the Effective Date shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity(ies) on or before the 20th calendar day of each month of the quantity of Irrigation Water and M&I Water taken during the preceding month.

RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED REPAYMENT OF
FACILITIES

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the operation and maintenance component of the Rate and amounts established to recover deficits and other charges, if any, including construction costs as identified in the following subdivisions.

496 (2) In accordance with the WIIN Act, the Contractor's allocable share
497 of Project construction costs will be repaid pursuant to the provisions of this Contract.

498 (A) The amount due and payable to the United States, pursuant
499 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been
500 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
501 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
502 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as
503 set forth in Exhibit "C". The Repayment Obligation is due in lump sum by November 30, 2020
504 as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting
505 Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the
506 amount due using the lump sum alternative. If such notice is not provided by such date, the
507 Contractor shall be deemed to have elected the installment payment alternative, in which case,
508 the first such payment shall be made no later than November 30, 2020. The second payment
509 shall be made no later than the first anniversary of the first payment date. The third payment
510 shall be made no later than the second anniversary of the first payment date. The final payment
511 shall be made no later than October 1, 2023. If the installment payment option is elected by the
512 Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by
513 giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting
514 Officer shall re-compute the remaining amount due to reflect the pre-payment using the same
515 methodology as was used to compute the initial annual installment payment amount, which is
516 illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be

established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

(B) Additional Capital Obligations that are not reflected in, the schedules referenced in Exhibit "C" and properly assignable to the Contractor, shall be repaid as prescribed by the WIIN Act without interest except as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B), however, will be considered under subdivision (b) of this Article. A separate agreement shall be established by the Contractor and the Contracting Officer to accomplish repayment of the Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the WIIN Act, subject to the following:

(1) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer notifies the Contractor of the Additional Capital Obligation; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(2) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act

is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(b) In the event that the final cost allocation referenced in Section 4011(b) of the WIIN Act determines that the costs properly assignable to the Contractor are greater than what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one (1) year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the Contractor and Contracting Officer. In the event that the final cost allocation indicates that the costs properly assignable to the Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

(c) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Component as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during

the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project Water for the following Year and the computations and cost allocations upon which those Rates are based. The Contractor shall be allowed not less than two months to review and comment on such computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates

then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall

be computed pursuant to Article 19 of this Contract.

(f) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

(g) Payments to be made by the Contractor to the United States under this Contract may be paid from any revenues available to the Contractor.

(h) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

(i) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(j) The parties acknowledge and agree that the efficient administration of this

Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or for making and allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(k) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

(2) Subject to the Contracting Officer's written approval, the Contractor may request and receive an exemption from such Tiered Pricing Component for

649 Project Water delivered to produce a crop which the Contracting Officer determines will provide
650 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
651 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
652 Irrigation Water shall apply only if such habitat values can be assured consistent with the
653 purposes of the CVPIA through binding agreements executed with or approved by the
654 Contracting Officer prior to use of such water.

655 (3) For purposes of determining the applicability of the Tiered Pricing
656 Component pursuant to this Article, Water Delivered shall include Project Water that the
657 Contractor transfers to others but shall not include Project Water transferred to the Contractor,
658 nor shall it include the additional water provided to the Contractor under the provisions of
659 subdivision (f) of Article 3 of this Contract.

660 (l) For the term of this Contract, Rates applied under the respective
661 ratesetting policies will be established to recover only reimbursable O&M (including any
662 deficits) and capital costs of the Project, as those terms are used in the then-current Project
663 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
664 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
665 practices which implement the Contracting Officer's ratesetting policies will not be implemented
666 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
667 need, and impact of the proposed change.

668 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
669 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates,
670 in accordance with the applicable Project ratesetting policy, adjusted upward or downward to

reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

(n) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

(o) With respect to the Rates for M&I Water, the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING O&M DEFICITS

8. The Contractor and the Contracting Officer concur that, as of the Effective Date the Contractor has no non-interest bearing O&M deficits and shall have no further liability therefore.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and

the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five (5)-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins, or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current

liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for by this Contract. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law, and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such discontinuance or reduction, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of inaccurate runoff forecasting

783 or other similar operational errors affecting the Project; drought and other physical or natural
784 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer
785 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article
786 17 of this Contract, no liability shall accrue against the United States or any of its officers,
787 agents, or employees for any damage, direct or indirect, arising therefrom.

788 (c) In any Year in which there may occur a Condition of Shortage for any of
789 the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this
790 Article, the Contracting Officer will first allocate the available Project Water consistent with the
791 Project M&I Water Shortage Policy as finally adopted after environmental review for
792 determining the amount of Project Water Available for delivery to the Project Contractors.
793 Subject to the foregoing allocation, in any year in which there may occur a Condition of
794 Shortage, the Contracting Officer shall then apportion Project Water among the Contractor and
795 others entitled to Project Water from Delta Division Facilities under long-term water service or
796 repayment contracts (or renewals thereof or binding commitments therefore) in force on
797 February 28, 2005, as follows:

798 (1) The Contracting Officer shall make an initial and subsequent
799 determination as necessary of the total quantity of Project Water estimated to be scheduled or
800 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other interim
801 renewal, long-term water service or repayment contracts then in force for the delivery of Project
802 Water by the United States from Delta Division Facilities during the relevant Year, the quantity
803 so determined being hereinafter referred to as the scheduled total;

804 (2) A determination shall be made of the total quantity of Project
805 Water that is available for meeting the scheduled total, the quantity so determined being
806 hereinafter referred to as the available supply;

(3) The total quantity of Project Water estimated to be scheduled or actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4 of this Contract, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to as the Contractor's proportionate share; and

(4) The available supply shall be multiplied by the Contractor's proportionate share and the result shall be the quantity of Project Water made available by the United States to the Contractor for the relevant Year in accordance with the schedule developed by the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such amount exceed the Contract Total. In the event the Contracting Officer subsequently determines that the Contracting Officer can increase or needs to decrease the available supply for delivery from Delta Division Facilities to long-term water service and repayment contractors during the relevant Year, such additions or reductions to the available supply shall be apportioned consistent with subparagraphs (1) through (4), inclusive.

(d) By entering into this Contract, the Contractor does not waive any legal rights or remedies it may have to file or participate in any administrative or judicial proceeding contesting: (i) the sufficiency of the Project M&I Water Shortage Policy; (ii) the substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is implemented in order to allocate Project Water between M&I and irrigation purposes; Provided, That the Contractor has commenced any such judicial challenge or any administrative procedures necessary to institute any judicial challenge within six months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall be interpreted to

validate or invalidate the Project M&I Water Shortage Policy.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. (a) To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

(b) Upon complete payment of the Repayment Obligation by the Contractor, this Article 13 shall no longer be applicable.

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

PROTECTION OF WATER AND AIR QUALITY

15. (a) Omitted

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest level possible as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(c) The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within its Service Area.

(d) This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

(e) Omitted

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are (were) constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the

Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted, it shall supersede this provision.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States may be stored, conveyed, and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time.

(2) Delivery of such non-Project water in and through Project facilities shall only be allowed to the extent such deliveries do not: (i) interfere with other Project

purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

(3) Neither the United States nor the Operating Non-Federal Entity(ies) shall be responsible for control, care, or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their respective officers, agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

(4) Diversion of such non-Project water into Project facilities shall be consistent with all applicable laws, and if involving groundwater, consistent with any applicable groundwater management plan for the area from which it was extracted.

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and Project Contractors entitled to Project Water from Delta Division Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors. Other Project Contractors shall have a second priority to any remaining capacity of facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior

to any such remaining capacity being made available to non-Project contractors.

(c) Upon complete payment of the Repayment Obligation by the Contractor, subdivision (a) of this Article 16 shall no longer be applicable.

OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

18. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

with other affected Project Contractors, in order to improve the O&M of the Project. The communication, coordination, and cooperation regarding O&M shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) Within 120 days following the Effective Date, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding significant decisions concerning Project O&M on a real-time basis.

(c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project implementation and authorization in coordination with Project Contractors to improve the water

supply, water quality, and reliability of the Project for all Project purposes.

(3) The Secretary will coordinate with Project Contractors and the State of California to seek improved water resource management.

(4) The Secretary will coordinate actions of agencies within the Department of the Interior that may impact the availability of water for Project purposes.

(5) The Contracting Officer shall periodically, but not less than annually, hold division-level meetings to discuss Project operations, division-level water management activities, and other issues as appropriate.

(d) Without limiting the contractual obligations of the Contracting Officer under the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

19. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

997 (c) When a partial payment on a delinquent account is received, the amount
998 received shall be applied first to the penalty charges, second to the administrative charges, third
999 to the accrued interest, and finally to the overdue payment.

1000 EQUAL EMPLOYMENT OPPORTUNITY

1001 20. During the performance of this Contract, the Contractor agrees as follows:

1002 (a) The Contractor will not discriminate against any employee or applicant for
1003 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
1004 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
1005 that employees are treated during employment, without regard to their race, color, religion, sex,
1006 sexual orientation, gender identity, or national origin. Such action shall include, but not be
1007 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
1008 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
1009 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
1010 places, available to employees and applicants for employment, notices to be provided by the
1011 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1012 (b) The Contractor will, in all solicitations or advertisements for employees
1013 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1014 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1015 gender identity, or national origin.

1016 (c) The Contractor will not discharge or in any other manner discriminate
1017 against any employee or applicant for employment because such employee or applicant has
1018 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
1019 employee or applicant. This provision shall not apply to instances in which an employee who
1020 has access to the compensation information of other employees or applicants as part of such
1021 employee's essential job functions discloses the compensation of such other employees or
1022 applicants to individuals who do not otherwise have access to such information, unless such
1023 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
1024 proceeding, hearing, or action, including an investigation conducted by the employer, or is
1025 consistent with the Contractor's legal duty to furnish information.

1026 (d) The Contractor will send to each labor union or representative of workers
1027 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1028 to be provided by the Contracting Officer, advising the labor union or workers' representative of
1029 the Contractor's commitments under Section 202 of Executive Order No. 11246 of September
1030 24, 1965, and shall post copies of the notice in conspicuous places available to employees and
1031 applicants for employment.

1032 (e) The Contractor will comply with all provisions of Executive Order No.
1033 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
1034 Labor.

1035 (f) The Contractor will furnish all information and reports required by
1036 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the
1037 Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
1038 by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain
1039 compliance with such rules, regulations, and orders.

1040 (g) In the event of the Contractor's noncompliance with the nondiscrimination
1041 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1042 canceled, terminated, or suspended in whole or in part and the Contractor may be declared
1043 ineligible for further Government contracts in accordance with procedures authorized in
1044 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1045 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule,
1046 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1047 (h) The Contractor will include the provisions of paragraphs (a) through (g) in
1048 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1049 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24,
1050 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
1051 will take such action with respect to any subcontract or purchase order as may be directed by the
1052 Secretary of Labor as a means of enforcing such provisions, including sanctions for
1053 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is
1054 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1055 Contractor may request the United States to enter into such litigation to protect the interests of
1056 the United States.

1057 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1058 21. (a) The obligation of the Contractor to pay the United States as provided in
1059 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1060 obligation may be distributed among the Contractor's water users and notwithstanding the default
1061 of individual water users in their obligation to the Contractor.

1062 (b) The payment of charges becoming due pursuant to this Contract is a
1063 condition precedent to receiving benefits under this Contract. The United States shall not make
1064 water available to the Contractor through Project facilities during any period in which the
1065 Contractor is in arrears in the advance payment of water rates due the United States. The
1066 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1067 parties that are in arrears in the advance payment of water rates as levied or established by the
1068 Contractor.

1069 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1070 obligation to require advance payment for water rates which it levies.

1071 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1072 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1073 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1074 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1075 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
1076 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1077 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
1078 Interior and/or Bureau of Reclamation.

1079 (b) These statutes prohibit any person in the United States from being
1080 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1081 discrimination under any program or activity receiving financial assistance from the Bureau of
1082 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
1083 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1084 obligation, including permitting officials of the United States to inspect premises, programs, and
1085 documents.

1086 (c) The Contractor makes this Contract in consideration of and for the
1087 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1088 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1089 Reclamation, including installment payments after such date on account of arrangements for
1090 Federal financial assistance which were approved before such date. The Contractor recognizes
1091 and agrees that such Federal assistance will be extended in reliance on the representations and
1092 agreements made in this Article and that the United States reserves the right to seek judicial
1093 enforcement thereof.

1094 (d) Complaints of discrimination against the Contractor shall be investigated
1095 by the Contracting Officer's Office of Civil Rights.

1096 PRIVACY ACT COMPLIANCE

1097 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1098 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act
1099 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required
1100 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the
1101 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to
1102 43 C.F.R. § 426.18.

1103 (b) With respect to the application and administration of the criminal penalty
1104 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1105 employees who are responsible for maintaining the certification and reporting records referenced
1106 in paragraph (a) above are considered to be employees of the Department of the Interior. See
1107 5 U.S.C. § 552a(m).

1108 (c) The Contracting Officer or a designated representative shall provide the
1109 Contractor with current copies of the Department of the Interior Privacy Act regulations and the
1110 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-
1111 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of
1112 information contained in the Landholders' certification and reporting records.

1113 (d) The Contracting Officer shall designate a full-time employee of the
1114 Bureau of Reclamation to be the System Manager responsible for making decisions on denials
1115 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.
1116 The Contractor is authorized to grant requests by individuals for access to their own records.

1117 (e) The Contractor shall forward promptly to the System Manager each
1118 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records
1119 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the
1120 System Manager with information and records necessary to prepare an appropriate response to
1121 the requester. These requirements do not apply to individuals seeking access to their own
1122 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless
1123 the requester elects to cite the Privacy Act as an authority for the request.

1124 (f) Upon complete payment of the Repayment Obligation by the Contractor,
1125 this Article 23 will no longer be applicable.

1126 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1127 24. In addition to all other payments to be made by the Contractor pursuant to this
1128 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1129 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1130 of direct cost incurred by the United States for work requested by the Contractor associated with
1131 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1132 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed

1133 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1134 contract administration.

1135 WATER CONSERVATION

1136 25. (a) Prior to the delivery of water provided from or conveyed through
1137 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1138 shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation
1139 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1140 Additionally, an effective water conservation and efficiency program shall be based on the
1141 Contractor's water conservation plan that has been determined by the Contracting Officer to
1142 meet the conservation and efficiency criteria for evaluating water conservation plans established
1143 under Federal law. The water conservation and efficiency program shall contain definite water
1144 conservation objectives, appropriate economically feasible water conservation measures, and
1145 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1146 Contract shall be contingent upon the Contractor's continued implementation of such water
1147 conservation program. In the event the Contractor's water conservation plan or any revised
1148 water conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet
1149 been determined by the Contracting Officer to meet such criteria, due to circumstances which the
1150 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1151 made under this Contract so long as the Contractor diligently works with the Contracting Officer
1152 to obtain such determination at the earliest practicable date, and thereafter the Contractor
1153 immediately begins implementing its water conservation and efficiency program in accordance
1154 with the time schedules therein.

1155 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1156 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1157 Contractor shall implement the Best Management Practices identified by the time frames issued
1158 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1159 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
1160 the Contractor.

1161 (c) The Contractor shall submit to the Contracting Officer a report on the
1162 status of its implementation of the water conservation plan on the reporting dates specified in the
1163 then-existing conservation and efficiency criteria established under Federal law.

1164 (d) At five (5)-year intervals, the Contractor shall revise its water
1165 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1166 water conservation plans established under Federal law and submit such revised water
1167 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1168 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1169 existing conservation and efficiency criteria for evaluating water conservation plans established
1170 under Federal law.

1171 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1172 shall be described in the Contractor's water conservation plan.

1173 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1174 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1175 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1176 hereafter acquired by the Contractor or any user of such water within the Contractor's Service

1177 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1178 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1179 any water user within the Contractor's Service Area acquires or has available under any other
1180 contract pursuant to Federal Reclamation law.

1181 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

1182 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1183 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1184 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1185 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1186 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1187 affect the rights or obligations of the Contractor or the United States hereunder.

1188 (b) The Contracting Officer has previously notified the Contractor in writing
1189 that the O&M of a portion of the Project facilities which serve the Contractor has been
1190 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and
1191 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1192 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
1193 the terms and conditions of the separate agreement between the United States and the Operating
1194 Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of
1195 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve
1196 funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1197 such successor determines, sets, or establishes for the O&M of the portion of the Project
1198 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-

1199 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal
1200 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1201 Contractor of its obligation to pay directly to the United States the Contractor's share of the
1202 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-
1203 Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the
1204 United States in accordance with the separate agreement identified in subdivision (a) of this
1205 Article.

1206 (c) For so long as the O&M of any portion of the Project facilities serving the
1207 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1208 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1209 Rates for Water Delivered under this Contract representing the cost associated with the activity
1210 being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1211 or its successor.

1212 (d) In the event the O&M of the Project facilities operated and maintained by
1213 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
1214 the United States during the term of this Contract, the Contracting Officer shall so notify the
1215 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
1216 the portion of the Rates to be paid by the Contractor for Project Water under this Contract
1217 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
1218 The Contractor shall, thereafter, in the absence of written notification from the Contracting
1219 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the
1220 revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1221 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1222 28. The expenditure or advance of any money or the performance of any obligation of
1223 the United States under this Contract shall be contingent upon appropriation or allotment of
1224 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1225 obligations under this Contract. No liability shall accrue to the United States in case funds are
1226 not appropriated or allotted.

1227 BOOKS, RECORDS, AND REPORTS

1228 29. (a) The Contractor shall establish and maintain accounts and other books and
1229 records pertaining to administration of the terms and conditions of this Contract, including the
1230 Contractor's financial transactions; water supply data; project operations, maintenance, and
1231 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1232 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1233 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1234 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1235 and regulations, each party to this Contract shall have the right during office hours to examine
1236 and make copies of the other party's books and records relating to matters covered by this
1237 Contract.

1238 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1239 books, records, or other information shall be requested from the Contractor by the Contracting
1240 Officer unless such books, records, or information are reasonably related to the administration or
1241 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1242 time within which to provide the requested books, records, or information.

1243 (c) At such time as the Contractor provides information to the Contracting
1244 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1245 to the Operating Non-Federal Entity(ies).

1246 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1247 30. (a) The provisions of this Contract shall apply to and bind the successors and
1248 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1249 therein by either party shall be valid until approved in writing by the other party.

1250 (b) The assignment of any right or interest in this Contract by either party
1251 shall not interfere with the rights or obligations of the other party to this Contract absent the
1252 written concurrence of said other party.

1253 (c) The Contracting Officer shall not unreasonably condition or withhold
1254 approval of any proposed assignment.

1255 SEVERABILITY

1256 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1257 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1258 an association or other form of organization whose primary function is to represent parties to
1259 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1260 enforceability of a provision included in this Contract and said person, entity, association, or
1261 organization obtains a final court decision holding that such provision is legally invalid or
1262 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1263 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1264 final court decision identify by mutual agreement the provisions in this Contract which must be
1265 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1266 The time periods specified above may be extended by mutual agreement of the parties. Pending
1267 the completion of the actions designated above, to the extent it can do so without violating any
1268 applicable provisions of law, the United States shall continue to make the quantities of Project
1269 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1270 Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

32. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party 30 days' written notice of the intent to take such action; *Provided, That* such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

33. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

34. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract, including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed

1296 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1297 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1298 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1299 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1300 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1301 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1302 be paid in accordance with Article 24 of this Contract.

1303 FEDERAL LAWS

1304 35. By entering into this Contract, the Contractor does not waive its rights to contest
1305 the validity or application in connection with the performance of the terms and conditions of this
1306 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1307 the terms and conditions of this Contract unless and until relief from application of such Federal
1308 law or regulation to the implementing provision of the Contract is granted by a court of
1309 competent jurisdiction.

1310 RECLAMATION REFORM ACT OF 1982

1311 36. (a) Upon a Contractor's compliance with and discharge of the Repayment
1312 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation
1313 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1314 (b) The obligation of a Contractor to pay the Additional Capital Obligation
1315 shall not affect the Contractor's status as having repaid all of the construction costs assignable to

1316 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation
1317 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1318 CERTIFICATION OF NONSEGREGATED FACILITIES

1319 37. The Contractor hereby certifies that it does not maintain or provide for its
1320 employees any segregated facilities at any of its establishments and that it does not permit its
1321 employees to perform their services at any location under its control where segregated facilities
1322 are maintained. It certifies further that it will not maintain or provide for its employees any
1323 segregated facilities at any of its establishments and that it will not permit its employees to
1324 perform their services at any location under its control where segregated facilities are
1325 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1326 Employment Opportunity clause in this Contract. As used in this certification, the term
1327 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
1328 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1329 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1330 facilities provided for employees which are segregated by explicit directive or are in fact
1331 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1332 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1333 identical certifications from proposed subcontractors for specific time periods) it will obtain
1334 identical certifications from proposed subcontractors prior to the award of subcontracts
1335 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1336 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1337 following notice to such proposed subcontractors (except where the proposed subcontractors
1338 have submitted identical certifications for specific time periods):

1339 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1340 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1341 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1342 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1343 Opportunity clause. The certification may be submitted either for each subcontract or for all
1344 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1345 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1346 NOTICES

1347 38. Any notice, demand, or request authorized or required by this Contract shall be
1348 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1349 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1350 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1351 postage prepaid, or delivered to the Board of Directors of the Westlands Water District, P. O.

1352 Box 6056, Fresno, California 93703-6056. The designation of the addressee or the address may
1353 be changed by notice given in the same manner as provided in this Article for other notices.

1354 MEDIUM FOR TRANSMITTING PAYMENT

1355 39. (a) All payments from the Contractor to the United States under this Contract
1356 shall be by the medium requested by the United States on or before the date payment is due. The
1357 required method of payment may include checks, wire transfers, or other types of payment
1358 specified by the United States.

1359 (b) Upon execution of this Contract, the Contractor shall furnish the
1360 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1361 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1362 out of the Contractor's relationship with the United States.

1363 CONTRACT DRAFTING CONSIDERATIONS

1364 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1365 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1366 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1367 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1368 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1369 CONFIRMATION OF CONTRACT

1370 41. Promptly after the execution of this amended Contract, the Contractor will
1371 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1372 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1373 for the authorization of the execution of this amended Contract. This amended Contract shall not
1374 be binding on the United States until the Contractor secures a final decree.

1375

1376 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1377 day and year first above written.

1378 UNITED STATES OF AMERICA

1379 By: [Signature]
1380 Regional Director
1381 Interior Region 10: California-Great Basin
1382 Bureau of Reclamation

1383 WESTLANDS WATER DISTRICT
1384

1385 By: [Signature]
1386 President of the Board of Directors



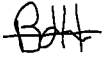
1387 Attest:

1388 By: [Signature]
1389 Secretary of the Board of Directors

1376 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1377 day and year first above written.

1378 UNITED STATES OF AMERICA

**APPROVED AS TO LEGAL FORM AND
SUFFICIENCY - REVIEWED BY:**



Digitally signed by
BRIAN HUGHES
Date: 2020.09.25
13:32:49 -07'00'

**OFFICE OF THE REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR**

TIME STAMP: 1:37 pm, May 11 2020

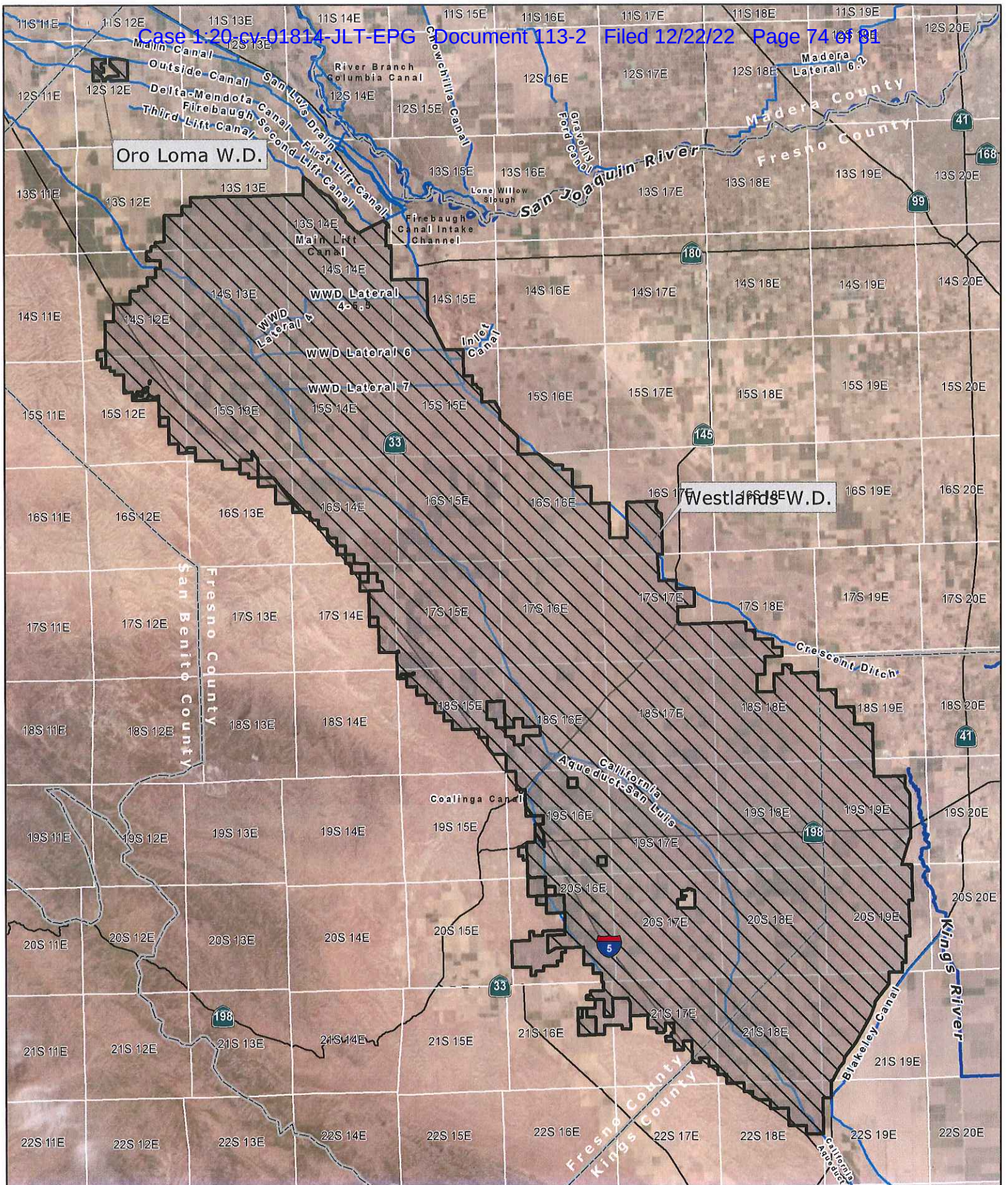
By: _____
Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation



1383 WESTLANDS WATER DISTRICT
1384 (SEAL)

1385 By: _____
1386 President of the Board of Directors

1387 Attest:

1388 By: _____
1389 Secretary of the Board of Directors



-  District Boundary
-  Contractor's Service Area

Agreement for Partial Assignment of Oro Loma W.D. Water Service Contract to Westlands W.D.

Contract No. 14-06-200-7823J-LTR1-P
Exhibit A



— BUREAU OF —
RECLAMATION



EXHIBIT B
WESTLANDS WATER DISTRICT
(PARTIAL ASSIGNMENT OF ORO LOMA WATER DISTRICT)
2020 Rates and Charges
(Per Acre-Foot)

	Irrigation Water SLC	M&I ³ Water SLC
COST-OF-SERVICE (COS) RATE		
Construction Costs	\$63.95	
DMC Aqueduct Intertie	\$1.15	
O&M Components		
Water Marketing	\$8.97	
Storage	\$18.01	
Credit for other PUE Remittance ¹	(\$2.28)	
Direct Pumping		
American Recovery and Reinvestment Act (ARRA)	\$0.00	
TOTAL COS RATE	\$89.80	
Project Use Energy Payment²		
Direct Pumping	\$11.35	
Other PUE Remittance	\$2.28	
IRRIGATION FULL-COST RATE		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	TBD	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD	
M&I FULL COST RATE		
Above)		
IRRIGATION		
Tier 2 Rate: >80% <=90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	TBD	
Tier 3 Rate: >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	TBD	
M&I		
Tier 2 Rate: >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)		
CHARGES AND ASSESSMENTS (Payments in addition to Rates)		
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.91	
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	

EXPLANATORY NOTES

- 1** Project Use Energy payment is being remitted to Western Area Power Authority for storage and direct pumping based on the deliveries of a select few contractors. The rates for the select few contractors are reduced as a credit in the O&M rates. All Contractors will ultimately pay for the storage and direct pumping service but as an offset to the amount paid by the select few.
- 2** Project Use Energy payment is in addition to the Contract Rate and Full-Cost Water Rates. Refer to the water rate books for more information.
- 3** The Contractor has not projected any delivery of M&I Water for the 2020 contract year. A temporary M&I Rate will be applied upon any M&I water delivery.

The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are: 2006 = 0 AF; 2011 = 0 AF; 2017 = 0 AF; equals a M&I Historic use average quantity of 0 AF.

Additional detail of rate components is available on the Internet at:

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

Exhibit C

Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

Unpaid Construction Cost from the 2020 Water Rate Books*
--

Contractor: Westlands Water District from Oro Loma WD
Facility: San Luis Canal
Contract: 14-06-200-7823J-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost		Discount
Construction Cost	\$	309,069	
2019 Repayment (Estimate) **	\$	-	
Adjusted Construction Cost	\$	309,069	\$ 298,679
Intertie Construction Cost (N/A):	\$	22,245	\$ 19,491
Total	\$	331,314	\$ 318,171
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	10/1/2020		\$ 80,769
Payment 2	10/1/2021		\$ 80,769
Payment 3	10/1/2022		\$ 80,769
Payment 4	10/1/2023		\$ 80,769
Total Installment Payments			\$ 323,077
20 yr CMT Rates - 10/01/2020			1.230%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			0.615%

M&I Construction Cost (2020 M&I Ratebook, Sch A-2Ba)		
	Unpaid Cost	
Construction Cost:	~	\$ -
2019 Repayment (Estimate) **		
Adjusted Construction Cost***:	\$	-

Calculation Support: Irrigation Lump Sum or First Payment**** 10/1/2020
 Days Until the End of the Fiscal Year 364

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2021	\$ 309,069	\$ 30,907	\$ 30,531	\$ 22,245	\$ 517	\$ 511	\$ 31,042
2022	\$ 278,162	\$ 30,907	\$ 30,530	\$ 21,728	\$ 517	\$ 511	\$ 31,041
2023	\$ 247,255	\$ 30,907	\$ 30,344	\$ 21,210	\$ 517	\$ 508	\$ 30,851
2024	\$ 216,348	\$ 30,907	\$ 30,158	\$ 20,693	\$ 517	\$ 505	\$ 30,663
2025	\$ 185,441	\$ 30,907	\$ 29,974	\$ 20,176	\$ 517	\$ 502	\$ 30,475
2026	\$ 154,534	\$ 30,907	\$ 29,791	\$ 19,658	\$ 517	\$ 499	\$ 30,289
2027	\$ 123,627	\$ 30,907	\$ 29,608	\$ 19,141	\$ 517	\$ 496	\$ 30,104
2028	\$ 92,721	\$ 30,907	\$ 29,427	\$ 18,624	\$ 517	\$ 493	\$ 29,920
2029	\$ 61,814	\$ 30,907	\$ 29,248	\$ 18,106	\$ 517	\$ 490	\$ 29,737
2030	\$ 30,907	\$ 30,907	\$ 29,069	\$ 17,589	\$ 517	\$ 487	\$ 29,555
2031-63				\$ 17,072	\$ 17,072	\$ 14,492	\$ 14,492
Total, Lump Sum Payment			\$ 298,679			\$ 19,491	\$ 318,171

Amount of Reduction, Lump Sum \$ 10,389 \$ 2,754 \$ 13,143

* Costs are assumed to be paid and all charges are assumed to be accurate. If at a later date charges are determined to need update, they are still required. Also, unpaid charges are still a requirement under contract.

** 2019 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

*** Excludes interest to payment date as interest will be computed as an annual expense as usual.

**** Contractor has 60 days from the effective date of the contract or installment dates to make payment.

RESOLUTION NO. 124-20

WESTLANDS WATER DISTRICT

A RESOLUTION OF THE BOARD OF DIRECTORS:

AUTHORIZING THE FILING OF NOTICES OF STATUTORY EXEMPTION AND CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR APPROVAL OF AND AUTHORIZATION TO EXECUTE THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE FROM DELTA DIVISION AND FACILITIES REPAYMENT,

AUTHORIZING APPROVAL, EXECUTION, AND DELIVERY OF THE CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE FROM DELTA DIVISION AND FACILITIES REPAYMENT, AND

AUTHORIZING ACTIONS IN FURTHERANCE THEREOF

WHEREAS, the Oro Loma Water District (OLWD) and the United States entered into: Contract No. 14-06-200-7823, which provided for the delivery of Central Valley Project Water to OLWD from the Delta Division facilities from April 7, 1959 to February 28, 1995; interim renewal contracts identified as Contract No. 14-06-200-7823-IR1 through 14-06-200-7823-IR8, which provided for water service to OLWD from March 1, 1995 through February 28, 2006; and a long-term renewal contract identified as Contract No. 14-06-200-7823-LTR1, which provided for the continued water service to OLWD following expiration of Contract No. 14-06-200-7823-IR8.; and

WHEREAS, on March 1, 2012, Westlands Water District and OLWD executed an agreement for the partial assignment of 4,000 acre-feet of Project Water under the OLWD's Long-Term Renewal Contract 14-06-200-7823-LTR1 and the United States and Westlands entered into Contract No. 14-06-200-7823J, which provided for water service from the Project facilities from March 1, 2012, through February 28, 2030; and

WHEREAS, on December 16, 2016, the United States Congress enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (WIIN Act); and

WHEREAS, Section 4011(a)(1) of the WIIN Act provides that "upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users' association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions."; and

WHEREAS, Section 4011(a)(1) further provides that "the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section

shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

WHEREAS, Section 4011(a)(4)(C) provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’ association [Contractor] and their landowners as provided under State law.”; and

WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

WHEREAS, on or about April 23, 2018, pursuant to WIIN Act, 4011(a)(1), the District requested that the Secretary of the Interior convert Contract No. 14-06-200-7823J to a repayment contract.

WHEREAS, pursuant to and consistent with the WIIN Act, the United States and the District negotiated terms and conditions to convert Contract No. 14-06-200-7823J to a repayment contract, and those terms and conditions are reflected in the attached Converted Contract between the United States and Westlands Water District providing for Project Water Service from Delta Division and Facilities Repayment, which is incorporated herein by this reference (Converted Contract); and

WHEREAS, the Converted Contract also reflects the current standard terms and conditions required by the Reclamation Manual; and

WHEREAS, the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project and its existing facilities; and

WHEREAS, the United States has determined that the District has fulfilled all of its obligations under Contract No. 14-06-200-7823J; and

WHEREAS, the District has demonstrated to the satisfaction of the Contracting Officer that the District has utilized the Project Water supplies available to it for reasonable and

beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to the Converted Contract; and

WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the District as an essential portion of its water supply; and

WHEREAS, the economies of regions within the Project, including the District's, depend upon the continued availability of water, including water service from the Project; and

WHEREAS, it is imperative to the District and its landowners that the District continue water service to lands within the District for beneficial use, and the District therefore proposes to enter into the Converted Contract; and

WHEREAS, under the Converted Contract, ongoing receipt and delivery of water will continue with no expansion of service and no new facilities constructed because the District will deliver the water received under the Converted Contract: (1) to lands within the District's boundaries for beneficial use and that have been in production, and (2) through existing facilities; and

WHEREAS, the District has reviewed the terms and conditions of the Converted Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution; and

WHEREAS, the District maintains in its records copies of contracts, water delivery reports, crop information and other data supporting these factual findings.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

1. The facts set forth in the recitals above and in the documents referenced therein are true and correct, and the Board so finds and determines.
2. The Converted Contract will not create any effects specified in Title 14 of the California Code of Regulations, Section 15300.2.
3. Executing the Converted Contract is statutorily exempt from compliance with the California Environmental Quality Act as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the Central Valley Project or the amount of water delivered is proposed.

4. Execution of the Converted Contract is exempt from the California Environmental Quality Act based on its record of proceedings showing that the Converted Contract continues water service to the District within established parameters, in the same scope and nature of the ongoing Central Valley Project and its existing facilities; it involves no increase in existing service; and no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.

5. Execution of the Converted Contract is categorically exempt from compliance with the California Environmental Quality Act as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it merely provides for continued operation of existing facilities.

6. The District shall prepare and file a Notice of Exemption with the Clerks of Fresno and Kings Counties and the Office of Planning and Research (State Clearinghouse) as provided for in Title 14 of the California Code of Regulations, Section 15062(b), in substantially the forms attached hereto as Exhibit A.

7. The Converted Contract in substantially the form presented to the Board and on file with the Secretary is hereby approved.

8. The President of the District is hereby authorized to execute and deliver the Converted Contract in substantially the form attached hereto, with such additional changes and/or modifications as are approved by the President of the District, its General Manager, and its General Counsel.

9. The District's officers, staff, and consultants are authorized and directed to take all additional actions they deem necessary or appropriate in order to carry out the intent of this resolution.

10. A certified copy of this resolution shall be prepared and transmitted by the District's Secretary to the United States Bureau of Reclamation.

Adopted at a regular meeting of the Board of Directors, at Fresno, California, this 15th day of September, 2020.

AYES: Directors Anderson, Bourdeau, Coelho, Errotabere, Enos, Ferguson,
Neves, Nunn and Peracchi

NOES: None

ABSENT: None



Bobbie Ormonde, District Secretary